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ABSTRACT

This paper examines the issue of human rights and the rights of aliens. Contemporary ideas of human rights and contractarian alternatives to universal rights are reviewed. The obligations of governments to admit refugees and to honor the rights of aliens within their borders are discussed. The right to political participation and right to welfare are also examined as they apply to aliens. The paper concludes with an analysis of the rights of undocumented aliens. (APM)

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Human Rights and the Rights of Aliens

by

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HUMAN RIGHTS AND THE RIGHTS OF ALIENS

It is sometimes suggested that by admitting a substantial number of laborers from Mexico and other Latin American countries under a "guestworker" program the United States could reduce the number of persons who enter or remain in its territories illegally.[1] This is an attractive idea, but advocates of such programs often propose substantial restrictions on the political and welfare rights of the persons admitted. The plan put forward in 1977 by the Carter administration is an example of this. It proposed creating a new legal status for foreign laborers, namely "temporary resident alien." Persons in this category would have the right to seek and enjoy employment, but unlike permanent resident aliens they would not be considered immigrants and would not qualify for naturalization. Temporary resident aliens would not have the right to vote, to run for public office, or to serve on juries, and they would not be eligible for federal social services such as Medicaid and Food Stamps.[2]

Although this proposal is now dead, the idea of limiting the rights of aliens is very much alive all around the world. My goal in this paper is to develop and use a framework for evaluating such limits on the rights of aliens. I proceed on the not uncontroversial assumption that there are universal human rights of roughly the kinds declared in the Universal Declaration of Human Rights and that these rights provide an important source of guidance in this matter.[3] I recorginize that this is assuming a lot, but I will not attempt to justify this assumption here.[4] It is worth noting, however, that an approach based on universal human rights has the advantage of appealing to internationally recognized standards rather than to values that are entirely rooted in American traditions -- and thus may provide a framework for thinking about this matter that is acceptable both to the United States and to Mexico. Further, those who find my assumption of universal human rights too large to swallow may nevertheless find my inquiries interesting as an attempt to trace and develop the implications of beliefs that many people hold.

I. THE CONTEMPORARY IDEA OF HUMAN RIGHTS

The attractive but problematic idea of universal human rights has been carried into prominence in recent decades by the international human rights movement. That movement, which grew out of the horrors and rhetoric of World War II, has attempted to gain international recognition for minimal standards of decent conduct for states.[5]

Human rights, as they are described in the documents of the human rights movement, have a number of characteristics. First, lest we miss the obvious, they are rights, not mere goals or aspirations. Briefly, a right is a high-priority prescription of a freedom or benefit that generates definite obligations for parties other than the rightholder.[6]

Second, human rights are universal moral rights. This means that all people have them independently of race, sex, religion, nationality and social position, and independently of their being recognized in the legal system of the country in which a person resides. These rights may not be effective rights until they are recognized and implemented in a legal system, but they are alleged to exist independently as moral standards of argument and criticism.

Third, this conception implies that human rights impose obligations on both governments and individuals. Governments have obligations not to violate these rights by their own actions and to promote and protect their observance in their territories. Individuals are obligated not to act in ways that violate these rights.

And fourth, these rights are alleged to be important enough to prevail in conflicts with contrary national norms and goals and to justify international action on their behalf. This importance is connected with the fact that human rights prescribe provision for people's most basic interests and freedoms.

The rights that are proclaimed by the human rights movement can be divided into five categories. These are: (1) rights to due process such as rights to a fair trial or freedom from torture; (2) rights to personal security and autonomy such as rights to protection from crime, freedom of movement, privacy, and freedom of thought and religion; (3) rights to political participation such as rights

to vote and speak; (4) rights to equality such as rights to freedom from discrimination and equality before the law; and (5) economic and social rights (or welfare rights) such as rights to a decent standard of living, education and medical care.

One goal of the international human rights movement is that people's rights as citizens come to include and implement all of their human rights--although their rights as citizens need not be limited to these. Universal human rights provide an international model for a basic set of civil rights.

Although the contemporary human rights movement presupposes a system of sovereign states, it attempts to guide the policies and actions of governments in humane directions--and a concern for the rights of aliens and refugees has been part of this. Interestingly, the concern of states with the treatment of their citizens abroad goes back to ancient times, and states accepted international accountability for their treatment of foreign visitors and residents long before they accepted accountability for their treatment of their own people.[7] A number of provisions in contemporary human rights documents are directed to the treatment of aliens, travelers and refugees. First, it is prescribed that persons should acquire a nationality at birth[8] and that people should not be arbitrarily deprived of their nationality.[9] Second, these documents assert rights to leave any country[10] and to return to one's own country.[11] And third, these documents assert a right to seek and enjoy asylum from persecution.[12] The American Convention on Human Rights is the most expansive in this area. In addition to the rights above it asserts rights to be granted asylum,[13] to due process for aliens when a state seeks to expel them,[14] and against collective expulsions.[15]

These documents do, however, permit states to restrict some rights to citizens. While most rights are ascribed to "everyone," some rights of political participation are ascribed instead to "every citizen."[16] This suggests that it is sometimes permissible to restrict the rights of aliens, but what makes this permissible in those cases is unclear. The economic and social rights that are proclaimed in most contemporary human rights manifestoes are not restricted to citizens; like most rights they are ascribed to "everyone."

Thus a straightforward reading of contemporary human rights declarations suggests that a policy of denying some political rights to aliens is permissible but that a policy of denying welfare services to them is not. It might be argued that the latter is also permissible on the grounds, recognized by the International Covenant on Economic, Social and Cultural Rights, that compliance with economic and social rights may not be immediately possible due to the high cost of making welfare and medical services available to all. Thus the Covenant requires "progressive" rather than immediate implementation of these rights.[17] This loophole was intended, however, to apply to countries that were too poor to implement most welfare rights and not to the rich countries of Europe and North America.

In any case the important issue here is not whether limits on the rights of aliens are compatible with the terms of contemporary rights declarations--which are obviously imperfect and open to controversy--but is rather whether such limits are compatible with a philosophically adequate conception of human rights and the premises about human welfare, autonomy and dignity that underlie such a conception. It is towards answering this question that we must now begin to move.

II. CONTRACTARIAN ALTERNATIVES TO UNIVERSAL RIGHTS

Most people believe that governments have obligations to their own citizens that they do not have to non-resident foreigners. The government of Canada, for example, has responsibilities in regard to how Canadians residing in Argentina are treated by the Argentinian government. The Japanese government does not have any comparable responsibility for how Argentina treats Canadians. Similarly, when Israeli athletes were taken captive in Munich by terrorists, the governments of Israel and West Germany had responsibilities and powers in regard to the safety and release of the hostages that the government of Australia, for example, did not.

One possible explanation of these special responsibilities of governments towards their citizens and of the absence of responsibilities of the same order to non-resident foreigners is found in a contractarian account of political authority and obligation. The explanation is that citizens, unlike foreigners, stand in a special contractual relationship to their government. It is the presence of this contractual relationship that is alleged to create governmental

duties to citizens and its absence that implies the absence of comparable duties to non-resident foreigners.

The strongest version of this kind of theory--which might be called Radical Contractarianism--asserts that there are no duties or obligations existing independently of agreements except the "natural" duty to honor one's agreements. This would be the only duty that did not derive from an agreement. One who held this kind of view would assert that political authority--and the obligations for citizens and governments that it involves--flow from explicit or tacit agreements. The state is viewed as a voluntary association. It may have obligations to its members in virture of the agreements that constitute it, but it need not have any obligations to aliens, to people that are not members. Privileges can be extended unilaterally to aliens on grounds of prudence (e.g. to generate trade or to promote good will), but these can be unilaterally revoked. Aliens can also be protected by reciprocal agreements between states or by special agreements between states and foreign entrants, agreed to at time of entry, concerning conditions of residence and treatment. But apart from such agreements governments have no obligations to people and aliens have no rights.

The most important objection to Radical Contractarianism in this context is that its implications are incompatible with some of our most basic moral convictions. On this view a state would do no wrong in killing, torturing or enslaving a person not protected by agreements -- e.g., a stateless refugee -- because the absence of agreements would imply the absence of any obligations. A closely-related objection is that Radical Contractarianism cannot account for even the most basic human rights. A central characteristic of such rights is that they are held independently of whether they are recognized or implemented by that state.

One might respond to these objections by allowing that substantive rights and duties exist independently of agreements and that states have negative obligations to avoid violating these rights and duties. But a contractarian element could be preserved by alleging that states acquire duties to take positive steps to uphold and protect these rights only through agreements. Such Modest Contractarianism, as we might call it, differs from the radical version in roughly the same way that Locke's theory of obligation differed from Hobbes'. It claims that the agreement which makes one a member of the polity is the agreement that generates a governmental obligation to protect one's independently existing rights. A

state could be obligated not to violate anyone's human rights independently of any agreement, but obligations to positive actions, such as protecting people against violations of their rights by other people or providing welfare benefits, would be incurred only by accepting someone for membership in the polity or by reciprocal agreements between states.

Even this account of the responsibilities of states to aliens would license morally objectionable policies, in my opinion, because it would permit a state to take no steps to prevent the murder or starvation of a stateless alien in its territory. If rights requiring protections or services from governments are viewed as special rights deriving from special agreements, it becomes impossible for any such rights to be universal. Further, both Radical and Modest Contractarianism are vulnerable to the traditional objections to explanations of political authority in terms of an original contract or tacit agreements.[18]

III. HUMAN RIGHTS AND THE OBLIGATIONS OF GOVERNMENTS

A theory of human rights is incomplete unless it contains an account of who is obligated to provide the freedoms and benefits that human rights prescribe. Since the human rights movement is internationally oriented, one might expect it to deny the relevance of national boundaries and to identify some international body such as the United Nations as the bearer of the main responsibility for protecting and upholding human rights. But given the weakness of international organizations in today's world and the insistence of states on self-determination, that position is very unrealistic.

The system of authority that we find on this planet at present is one that divides the earth into distinct territories, expects a government to emerge in each territory, and prescribes a high degree of autonomy for these governments. No genuine alternative to this system of sovereign states is presently available, and hence it should be taken as given at present in thinking about who should bear the main responsibility for the implementation of human rights.

If we focus on obligations to refrain from directly violating human rights, it is easy to answer the question of who has such obligations. The answer is every-

one. All people and all states have these "negative" obligations, and no reference need be made to national boundaries. Thus the government of France would do as much wrong in having its agents kill an Egyptian in Cairo as in having them kill a Frenchman in Paris. Citizenship or nationality is irrelevant.

But not all of the obligations generated by human rights are negative. Some obligations generated by human rights require positive steps, not mere restraint from violating rights. To implement a right to legal counsel in criminal cases lawyers must be educated and a certain sort of legal system constructed and maintained. To uphold the right to life people must be provided with protection against murderers. And to implement the right to education public schools must be made available. To keep these two kinds of obligations separate we can say that negative obligations generated by human rights are obligations to respect human rights and that positive obligations generated by human rights are obligations to uphold human rights.[19]

Obligations to uphold human rights in a particular territory are seldom if ever obligations of all persons. A Columbian peasant has a negative obligation not to kill Venezuelans, but he or she does not have positive obligations to bring it about that Venezuelans are provided with protections against crime or with other institutions to uphold their rights. This, it can reasonably be said, is the responsibility of the Venezuelan government. In accordance with this idea the human rights movement has assumed that each state has the primary responsibility for upholding the rights of people in the territory it governs. This does not rule out, of course, the existence of obligations on states to assist in upholding rights in other territories through peaceful means--and in fact the United Nations takes as one of its goals "promoting and encouraging respect for human rights."[20]

There are at least two good reasons for assigning each state the primary responsibility for upholding human rights in the territories it governs. One is that assigning primary responsibility for upholding rights in the territory of a state to some other state or to an international organization is incompatible with the autonomy or self-determination that states insist upon and that cannot be violated without posing a threat to international peace.[21] Protecting people's rights is such an essential role of governments that a "government" deprived of the responsibility for upholding the rights of its people would be no government at all. The second reason for this assignment of responsibility for up-

holding human rights is that only those who hold governmental power in a territory can effectively protect and implement people's rights there. The government of an alien's native land may be able to exert some influence to obtain decent treatment for that person in another country, but the primary responsibility must lie with those who have effective control. What other nations can do to protect the rights of people within a sovereign state is likely to be little and late.

As high priority and universal norms, human rights require implementation even when this is inconvenient or expensive. Although human rights must be accommodated to and implemented within our existing international system, this should be done so as to provide fully for the upholding of everyone's rights. Thus, in determining the moral obligations that flow from human rights, conceptions of those obligations that provide for everyone's rights to be upheld are to be preferred to conceptions that leave some persons in a position where there is no agency that is obligated to uphold their rights.

If a state's obligation to uphold a person's rights does not derive from an agreement, what can its source be? The answer, I believe, is that each person has human rights that generate positive obligations to uphold those rights for the person or agency that is best able to do so--and the government of a state is normally in this position in regard to persons in its territories. Governments alone have the financial resources, administrative control, and police power that are requisite to upholding people's rights.

My suggestion, then, is that it is presence in a territory rather than citizenship that determines whether the government of that territory has the primary responsibility for upholding a person's human rights at a particular time. Human rights flow from one's humanity, not from one's citizenship status, and thus aliens have as much claim to provision for and protection of their rights as do natives. This conception of the obligations that flow from human rights is preferable to one that ties an obligation to uphold rights to citizenship because it avoids leaving some people without protection for their rights. If a person is regularly resident in one country and is only temporarily present in another, then the two governments might be said to share responsibility--but the primary administrative role must go to the host country. Whether in cases of this kind the host country must bear all the costs of upholding an alien's rights--or whether these costs can

be transferred to the alien's native country--will depend, it seems to me, on whether reciprocal provision is made for each other's nationals, whether substantial taxes are collected from aliens, and whether the wealth of the two countries is roughly comparable.

The view that I have sketched here claims that states have the same prima facie obligations to respect and uphold the human rights of aliens in their territories that they have to uphold the rights of their citizens. Unlike Radical Contractarianism my view presupposes rights that exist independently of agreements. And it breaks with Modest Contractarianism by denying that a government's duty to protect or satisfy someone's rights is dependent on citizenship. It claims that people's human rights generate obligations of governments to provide some basic protections and services, independently of contribution, and that these obligations fall mainly on the government of the territory where a person is located. The grounds of human rights in considerations of human dignity, autonomy and welfare are unrelated to alienage or citizenship and apply equally to aliens and natives.

One could allow that the human rights of aliens generate positive obligations for the governments of their host countries and still deny that the existence of these rights and obligations settles the question of whether aliens should be given full civil rights with all of the concomitant protections and services. There are at least two arguments which could be given in support of this point of view. One is that human rights are not absolute (or at least some of them are not), and hence it is possible for competing considerations to override them and dictate restricted rights for aliens. The second argument claims that people waive some or all of their rights when they enter a foreign country and concludes that limits on the rights of aliens are therefore not objectionable.

The first argument recognizes that human rights are not absolute and concludes from this that more powerful competing considerations can override human rights and dictate an inferior status for aliens. This is indeed a possibility, but in order to conclude that it is an important possibility we must identify some of the kinds of considerations that can override human rights. I am prepared to allow, for example, that bonafide considerations of national security during wartime might justify

restrictions on the rights of aliens to travel within the country that are not imposed on citizens. But I doubt that such restrictions can be justified apart from emergency conditions that occur infrequently. Attempts to provide such justification in other situations are likely to use false premises about the dangerous character of most aliens or to underestimate the weight of human rights. It is an essential part of the idea of human rights, and hence part of what one accepts in assuming the existence of universal human rights, that the prescriptions involved are weighty ones that are not easily overridden by considerations of national security, prosperity or convenience. It is this strength in competition with other considerations that makes human rights difficult to justify, but it is also part of their political appeal as firm guarantees of important freedoms and benefits. Although human rights may be overrideable in true emergencies, we cannot allow that the expense or inconvenience of giving full civil rights to aliens is alone sufficient to override the obligations that flow from these people's human rights. This issue will be dealt with in a concrete case when we discuss rights of political participation for aliens.

The second argument for the view that human rights sometimes fail to dictate how aliens should be treated involves the thesis that people waive all or some of their human rights when they enter a foreign country. It might be claimed, for example, that when one enters a country with the knowledge that it restricts the freedome of expression, one tacitly waives this right. But there are many problems with this line of argument. First, many entrants do not know very much about the legal practices of the countries they enter, and hence they either do not waive any rights or they do not know which rights they are waiving. Second, this kind of tacit consent to deprivation of one's rights seems to be just as mythical as the tacit consent that contractarian theories appeal to in order to justify political authority. To expect to endure the lack of freedom in a country that one enters is not the same as agreeing that there is nothing wrong with a system in which that freedom is unavailable to oneself and others. And third, the assumption that governments may require people to waive their human rights as conditions of receiving important benefits is incompatible with the effective implementation of human rights, since this assumption would allow repressive governments to argue that their people had waived their rights in exchange for food or other benefits.

IV. TWO CONTROVERSIAL KINDS OF RIGHTS

Rights to political participation. Human rights imply prescriptions for the creation of operative civil rights within the domestic legal system. In implementing human rights there are prima facie grounds for upholding the rights of both natives and aliens. But, as the language of some human rights documents suggests, it may be justifiable to restrict to citizens some rights of political participation. If this is so, then there must be powerful considerations that override the general presumption in favor of respecting and upholding the human rights of aliens. There are two arguments that I find persuasive in regard to the right to vote in national elections.

The first of these arguments notes that an important purpose of an electoral system is to allow people to remove from office those officials who act in ways contrary to their interests and rights. Satisfying this goal requires that those who vote have some minimal degree of knowledge and maturity, and hence the right to vote in national elections is not normally granted to young children. If aliens lack knowledge of a country's goals, traditions, procedures and politicians--as recently arrived aliens may--then this important goal of the electoral system would be less likely to be achieved if they were allowed to vote. Thus one ground for the right to vote suggests some ways in which it should be qualified.

The second argument proceeds in a similar way. It notes that restrictions on the rights of aliens may serve to maintain the national sovereignty or self-determination that the international system takes as a fundamental norm. True self-determination requires that the people of a nation be able to shape their collective destiny as a group. If recently arrived aliens with little commitment to a country's culture, goals, and institutions were permitted to vote, their votes might swing a close election in a way that would frustrate the desires of a majority of permanent residents. Suppose, for example, that Turkish guestworkers in Germany were allowed to vote in national elections. Suppose further that they happened to be greatly opposed to the German government's policies towards Greece but that most of them knew or cared little about that government's other policies. If their votes turned out to be decisive in ousting that government, this would have permitted the interests of Turks to influence substantially the policies of West Germany. Thus considerations of national self-determination may justify some restrictions on the voting rights of aliens.

Having offered these arguments, I wish to proceed immediately to qualify them. First, note that these arguments would not justify denying voting rights to aliens who have resided in a country for a long time and who have indicated a desire to become citizens. Second, in areas where national loyalties are irrelevant and aliens have the requisite knowlege, there is no justification for exclusion. Thus participation in local elections may be justifiable. Similarly, participation in workers' councils, unions, and other aspects of "industrial democracy" may be justifiable.

A successful system of jury trials, like an effective electoral system, requires that participants have some degree of maturity and knowledge of the system. And the impact of a single vote is likely to be much greater in a trial than in a general election. Thus there are grounds for being selective in choosing people for jury service. It might be justifiable to exclude temporary resident aliens as a group from jury services on the grounds that their knowledge of the host country's legal standards and practices is likely to be very limited. But this rationale would not be plausible for resident aliens who have resided in the country for, say, a decade or more.

Other rights of political participation seem to be largely unaffected by these kinds of arguments. Some countries limit the freedom of expression of aliens, but I find no justification for this. Foreigners may come to a country in hope of delivering a message about that country's oppressive policies at home or abroad, and it is important to the defense of human rights that the delivery of such messages be possible. Further, this is a way of allowing the right of petition to operate across national boundaries. Suppose, for example, that African students in Switzerland wish to protest some aspect of Swiss policies toward South Africa. To claim that these students should be silenced or prevented from demonstrating peacefully so as to preserve the "autonomy" of Swiss political processes is to ignore John Stuart Mill's point that influence which uses words to persuade rational people to act in certain ways is not coercive influence.[22] The ability of Swiss voters and politicians to decide on the course that their country should take is not decreased by the presence of new and different voices; it is rather increased by the additional perspectives that they provide. As Alexander Meiklejohn emphasized, self-government requires both freedom to express oneself and freedom to hear and inquire.[23] The effective exercise of rights of free expression and of petition requires freedom of association

and peaceable assembly, and hence restrictions on these rights would also be unjustifiable.

Rights to welfare. One way in which the contemporary idea of human rights differs from its eighteenth century antecedents is found in the addition of economic and social rights to the list of human rights. The idea that all people are entitled to the minimal conditions of a decent life is frequently challenged by those who believe that one cannot be entitled to anything but the fruits of one's own labor.[24] Although I cannot offer a full response to such challenges here, one central argument is that provision for people's essential material needs is as crucial to the maintenance of their dignity, autonomy and welfare as is provision for their liberty or security.[25] If one is willing to allow that people are entitled, independently of contribution, to positive efforts by government to uphold their due process rights and rights of security and autonomy, it is but a small step to the view that people are also entitled to the minimal requirements of survival and a decent life independently of their contributions. People normally provide for their own food and for much of their own security, but when they are unable to do these things, they have a right to assistance. It should be noted, however, that a belief that people are entitled to the minimal economic requirements of a decent life does not necessarily commit one to the view that they are entitled, as a matter of human rights, to all the benefits available under a modern welfare state.

If I am correct in believing that rights to the minimal requirements of survival and a decent life are grounded, like other rights, in considerations of human dignity, autonomy and welfare, then these rights are possessed independently of whether one is a native or an alien. States have the same prima facie obligation to grant these rights to aliens in their territories that they have to grant them to citizens. Of course not all countries have the means at present to implement even a rudimentary welfare system and hence in some countries these rights will have to be implemented progressively rather than immediately. But in countries where sufficient resources are available, economic and social rights impose obligations on governments to guarantee the availability of certain essential goods and services.

There are, however, a number of arguments against extending welfare rights to aliens that might be given even by those who believe that such rights should be extended to citizens. One of these arguments suggests that resident aliens are entitled to welfare benefits only if they have paid taxes to the host country. In fact, both legal and illegal aliens in the U.S. tend to pay taxes and make social security payments. Further, a legitimate concern that those who receive a share of a country's benefits should bear a fair share of its burdens need not be a demand that no services be provided in the absence of contribution. A duty to contribute is contingent on the ability to do so, and we do not cut off aid to those who have been severely handicapped since birth because they are unable to contribute. Similarly, resident aliens may be required to pay reasonable taxes, but if a guestworker is disabled in an industrial accident on his first day on the job (and thus before he pays any taxes), it would be grotesque to deny him aid on the grounds that no contribution has been made. A conception of the obligations flowing from human rights that made obligations to uphold a person's rights dependent on having made a contribution to the host society would leave many people without effective provision for their human rights.

A second argument claims that since various provisions concerning responsibility for welfare benefits can be negotiated between countries sending and countries receiving guestworkers, no other standards have universal applicability. The most direct response to this is that diplomats lack the power morally or legally to waive the basic human rights of the people they represent--even though they may have considerable discretion in the kinds of arrangements they make for the implementation of those rights. Basic human rights are non-negotiable. And the effective implementation of human rights is not compatible with requiring guestworkers to waive their rights as a condition of being allowed to participate in guestworker programs.

A third objection claims that providing aliens with welfare benefits of a level that they cannot get in their native lands will give people in less developed countries even more reason to want to immigrate to rich countries like Switzerland and the U.S. But it is the prospect of high wages, not the prospect of high welfare benefits, that seems to be the main attraction in rich countries.[26] Further, the high priority of human rights implies that

they are not to be set aside in the face of mere inconveniences such as a slight rise in the number of persons wishing to enter a country.

V. THE RIGHTS OF UNDOCUMENTED ALIENS

In many countries those who design immigration and guestworker policies must deal not only with aliens who are authorized to be in the country but also with those who lack such authorization--persons who have entered the country surreptitiously or who have overstayed residence permits. In the U.S. and Venezuela, for example, undocumented aliens are estimated to number in the millions.[27] Although I have no new proposals for dealing with this problem, the approach that I have been developing does provide some guidelines.

The most important point to be made about undocumented aliens is that they too have human rights. These rights flow from one's humanity, not from one's citizenship. In virtue of these rights everyone is obligated to refrain from victimizing undocumented aliens, and there should be at least one government that is obligated to protect and uphold these rights. I have argued that governments who have aliens in their territories are obligated to uphold the rights of these persons, and in my view the same is true of undocumented aliens. Police brutality would not be less troubling if it were mainly directed towards undocumented aliens, and malnutrition would not be more tolerable if it were only found among children of "illegals." Presence in a territory is sufficient to generate an obligation for the government of that territory to uphold a person's human rights--whether or not that person is documented. Presence generates this obligation, but it does not preclude deportation in accordance with due process of law.

Although I believe that rich states with room to spare have moral obligations to admit people fleeing persecution and poverty, I also believe that states have the right to limit immigration to manageable numbers. The grounds for this right are, first, that the authority to control one's borders is an aspect of the national sovereignty that is granted to states under the current international system; second, that establishment and maintenance of an effectively self-determining political community can be hindered by a large influx of people of a different culture and outlook--especially if these people come at a pace that makes

economic and cultural integration impossible; and third, that a state's ability to uphold rights within its own territory requires that it preserve its stability and resources. A corollary of the right to limit immigration is the right to deport those who enter or stay illegally.

If I am right about this, then a state does not violate a person's human rights by refusing him or her entry (assuming that this is in accordance with a general immigration policy that is morally acceptable), even though the result is that the person remains in a country where his or her human rights are not fully respected or upheld.

One might object to my contention that governments are obligated to uphold the rights of aliens present in their territories by claiming that aliens forfeit their human rights when they illegally enter or remain in a country. To forfeit one's rights is to lose them for misconduct. Although some countries require those convicted of serious crimes to forfeit some of their civil rights, no civilized country strips criminals of all legal protections and guarantees. And since illegal entry or residence is a rather minor "crime," there is little basis for the view that aliens present in a country without authorization have forfeited all of their human rights. Further, this view would have unacceptable consequences, I believe, since it would imply that a state would do no wrong in killing or torturing an illegal alien.

A more plausible version of this objection is that what the undocumented alien loses by his or her illegal presence in a country is not his or her human rights, but rather any claim upon the positive obligation to uphold those rights that a host government would normally have. By refusing to comply with a state's established immigration procedures the undocumented alien brings it about that his or her presence in a territory is insufficient to generate an obligation for the government of that territory to uphold his or her rights. Although the host government is obligated to respect an undocumented alien's rights, it is not obligated to uphold them.

This view may be attractive to one who wishes to minimize the costs of dealing with undocumented aliens, but it does not have much to recommend it as part of a theory of human rights. As noted above,[28] in choosing

between alternative conceptions of the obligations generated by human rights, a conception that provides for the protection of everyone's rights in all places is preferable to one that sometimes leaves people without an agency to uphold their rights. Since the position that states have no obligations to uphold the rights of undocumented aliens has the result of leaving many people without an agency that is morally obligated to protect their rights, there is reason to reject this position in favor of a conception that postulates a prima facie obligation of each state to uphold the rights of all persons in its territory. Further, this view has unacceptable consequences, I believe, since it implies that a state would do no wrong if it refused to protect an illegal alien from an angry mob or to provide food for persons awaiting deportation.

If we allow that the human rights of undocumented aliens should be upheld, and if we also allow that governments may legitimately deport such persons when they are identified as undocumented in accordance with due process, the problem arises how to implement effectively the human rights of undetected illegal aliens. These people may benefit from general policies of respect and protection for human rights in a country, but more specialized protections and services cannot be sought without risk of detection. Undocumented aliens are often reluctant to seek legal remedies for wrongs done to them or to apply for welfare services, because to do so is to risk apprehension and deportation. As a result, undetected illegal aliens are in a position to be exploited, robbed and blackmailed. It is impossible to uphold fully the rights of people who avoid all contact with government agencies, and this can lead to serious human rights problems when there are millions of undocumented aliens in a country. Thus a serious concern with the implementation of people's human rights would lead one to seek effective solutions to the "double bind" that illegal aliens face.

This problem can be ameliorated if some important legal and welfare services can be obtained without proof of immigration status. The agencies providing these services might also be forbidden to release information about their clients to those enforcing immigration laws. This may work as a short term or compromise solution, but it is paid for in less effective enforcement of immigration laws. A more adequate solution for the U.S., it seems to me, would in-

volve an amnesty for undocumented aliens already present, efforts to reduce illegal entrance--including, perhaps, some kind of guestworker program--and a liberal immigration policy for people who wish to migrate to the U.S.

NOTES

1. See, for example, Charles B. Keely, U.S. Immigration: A Policy Analysis, Public Issues Paper No. 2, (New York: The Population Council, 1979); and Edwin P. Reubens, "Immigration Problems, Limited-Visa Programs, and Other Options," Working Paper NB-2 (College Park, Md.: Center for Philosophy and Public Policy, 1980), photocopy.

2. See James W. Singer, "Controlling Illegal Aliens -- Carter's Compromise Solution," National Journal, September 3, 1977, pp. 1379-83. For a detailed critique of Carter's plan see Rev. Msgr. Anthony J. Bevilacqua, "Legal Critique of President Carter's Proposals on Undocumented Aliens," Catholic Lawyer 23 (1978), pp. 286-300. For an American sociologist's perspective on similar problems in Germany see Ray C. Rist, Guestworkers in Germany (New York: Praeger Publishers, 1978).

3. For the text of the Universal Declaration of Human Rights and other documents such as the European Convention on Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the American Convention on Human Rights see Ian Brownlie, ed., Basic Documents on Human Rights (Oxford: Clarendon Press, 1971).

4. Sketches of such a justification are found in my papers, "Is There a Human Right to Employment?" Philosophical Forum X (1978-79), pp. 149-170 at 158, and "Cultural Diversity and Human Rights," in Jack Green and Vera Nelson, eds., International Human Rights: Contemporary Perspectives (New York: Earl M. Coleman Enterprises, Publishers, 1980), pp. 43-56 at 48.

5. See Louis Henkin, The Rights of Man Today (Boulder, Colorado: Westview Press, 1978), pp. 89-132.

6. This characterization of rights, as well as the material that follows on the contemporary idea of human rights, is drawn from my unpublished paper, "Making Sense of Human Rights." See also Rex Martin and James W. Nickel, "Recent Work on the Concept of Rights," American Philosophical Quarterly 17 (1980), pp. 165-180.

7. See Myres McDougal et al, "The Protection of Aliens from Discrimination and World Public Order," American Journal of International Law 70 (1976), p. 433.

8. Universal Declaration, 15:1; International Covenant on Civil and Political Rights, 24:3; American Convention on Human Rights, 20:1.

9. Universal Declaration, 15:2; American Convention on Human Rights, 20:3.

10. Universal Declaration, 13:2; International Covenant on Civil and Political Rights, 12:2; American Convention on Human Rights, 22:3.

11. Universal Declaration, 13:2; International Covenant on Civil and Political Rights, 12:4; American Convention on Human Rights, 22:5.

12. Universal Declaration, 14:1; American Convention on Human Rights, 22:7.

13. American Convention on Human Rights, 22:7-8.

14. American Convention on Human Rights, 22:6.

15. American Convention on Human Rights, 22:9.

16. International Covenant on Civil and Political Rights, 25.

17. International Covenant on Economic, Social and Cultural Rights, 2:1.

18. See, for example, the criticisms in S. I. Benn and R. S. Peters, Social Principles and the Democratic State (London: Allen and Unwin, 1958), pp. 322-23.

19. Note that I do not classify rights as positive and negative; the reason for this is that most rights generate both negative and positive obligations. The distinction is between types of obligations flowing from rights. See Henry Shue, "Rights in the Light of Duties," in Peter G. Brown and Douglas MacLean, eds., Human Rights and U.S. Foreign Policy (Lexington, Mass.: Lexington Books, 1979), pp. 65-82.

20. United Nations Charter, 1:3, 13:1, 55:(c), 68.

21. On self-determination and non-intervention see Charles Beitz, Political Theory and International Relations (Princeton: Princeton University Press, 1979), pp. 92-123, and the essays by Thomas Buergenthal, J. Bryan Hehir, and Mark R. Wicclair in Peter G. Brown and Douglas MacLean, eds., Human Rights and U.S. Foreign Policy (Lexington, Mass. Lexington Books, 1979), pp. 111-160.

22. John Stuart Mill, On Liberty (1859), Chs. 1 and 2.

23. Alexander Meiklejohn, Free Speech and its Relation to Self-Government (New York: Harper and Row, 1948).

24. See Maurice Cranston, What Are Human Rights? (London: Bodley Head, 1973), pp. 65-72; Charles Frankel, Human Rights and Foreign Policy (New York: Foreign Policy Association, 1978), pp. 38-49; and Robert Nozick, Anarchy, State and Utopia (New York: Basic Books, 1974), pp. 149-275.

25. For a fuller treatment of these issues see my paper, "Is There a Human Right to Employment?" Philosophical Forum X (1978-79), pp. 149-170.

26. As evidence for this claim I would cite the fact that Mexican migrants to the U.S. are disproportionately young and male -- and hence not in great need of welfare services. See James T. Bennett and Manuel Johnson, "Illegal Aliens: Economic and Social Issues," Akron Business and Economic Review, 9 (1978), pp. 11-16 at 12.

27. Ibid. for the U.S. On Venezuela see John Enders, "Venezuela: Country of Non-Citizens," Christian Science Monitor, November 28, 1979, section B, page 6, column 1.

28. Page 8.